IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

OP.No. 7611 of 1998(F)

PETITIONER:

M/S.SWARAJ MAZDA LTD., SCO 156-160,
SECTOR 80, MADHYA MARG, CHANDIGARH,
REP. BY ITS ASSISTANT MANAGER,
(MARKETING), G.LAKSHMANAN.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.R.MURALEEDHARAN

RESPONDENTS:

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1. INTELLIGENCE OFFICER, SQUAD NO.III,
AGRICULTURAL INCOME TAX AND SALES TAXES,
SALES TAX COMPLEX, ERNAKULAM.

2. DEPUTY COMMISSIOENR OF AGRICULTURAL INCOME
TAX AND SALES TAX, ERNAKULAM.

3. BOARD OF REVENUE(TAXES), TRIVANDRUM.

4. ASSISTANT COLLECTOR, IST GRADE, U.T.,
CHANDIGARH.

BY GOVERNMENT PLEADER SRI.K.P.PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.13266/1998 IN OP NO.7611/1998

DISMISSED:

14.11.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1:TRUE COPY OF COMMON PENALTY ORDER DT.22.12.95 FOR THE YEARS 1992-93 AND 93-94.

P2: TRUE COPY OF REVISIONAL ORDER OF R2 DT.31.7.97.

P3: TRUE COPY OF REVISION PETITION FILED BEFORE R3 DT.28.8.97 FOR THE YEAR 1992-93.

P4: .DO. 1993-94.

P5: TRUE COPY OF REVISIONAL ORDER PASSED BY R3 DT.8.1.98 FOR THE YEAR 1992-93.

P6: .DO. 1993-94.

P7: TRUE COPY OF DEMAND NOTICE ISSUED BY R4.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.7611 of 1998

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Dated this the 14th day of November, 2007.

JUDGMENT

The petitioner is challenging Exts.P5 and P6 orders of the Board of Revenue confirming penalty levied under Section 45A of the KGST Act for evasion of sales tax for the assessment years 1992-93 and 1993-94. The petitioner, a manufacturer of commercial vehicles in Punjab transported vehicles in their own name, stocked the same in rented premises and effected sales without payment of tax. It is not in dispute that petitioner did not take any registration or remit any tax in Kerala. Counsel contended that transactions are interstate sales accounted in Punjab and CST was paid. However, on going through the impugned orders I find no such contention is raised before the lower authorities. Moreover, it is in evidence that vehicles were brought in the name of the petitioner after taking temporary registration in Punjab and transport was also in the name of the petitioner. In other words, sales were effected from stock held in Kerala and after transport of goods which goes to establish that movement of vehicles were not against prior orders of sale. In the circumstances, there is no ground to interfere with the finding of lower authorities that petitioner deliberately

evaded payment of local sales tax and therefore, penalty is rightly sustained. So far as quantum of penalty is concerned, the petitioner has no case that tax is paid with interest even after detection of the offence. In the circumstances, since tax is not paid, there is no ground to interfere with quantum of penalty also. The O.P. is accordingly dismissed.

C.N.RAMACHANDRAN NAIR
Judge

pms